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COMMISSION ON HUMAN RIGHTS

Fifty-first session

SUMMARY RECORD OF THE 34th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 21 February 1995, at 3 p.m.

Chairman: Mr. BIN HATAM (Malaysia)

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The meeting was called to order at 3.10 p.m.

QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT, IN PARTICULAR:

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(d) QUESTION OF A DRAFT OPTIONAL PROTOCOL TO THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

(agenda item 10) (continued) (E/CN.4/1995/6-E/CN.4/Sub.2/1994/42, E/CN.4/1995/9-E/CN.4/Sub.2/1994/44, E/CN.4/1995/30, 31 and Add.1-4, 32, 33, 34 and Add.1 and Corr.1-2, 35, 36, 37, 38 and Add.1, 39-41, 100, 111 and 133; E/CN.4/1995/NGO/3, 6, 19, 23 and 37; E/CN.4/Sub.2/1994/22, 23 and Add.1, 24 and 33; A/49/484 and Corr.1 and Add.1)

1. Mr. SILK (Robert F. Kennedy Memorial Center for Human Rights), referring to the widespread problem of human rights violations carried out under the authority of national security legislation, said that legislation purporting to protect national security and public order had often been used to limit internationally recognized human rights, particularly the rights to freedom of expression, association and religion. He therefore welcomed the 1994 report of the Sub-Commission's Special Rapporteur on human rights and states of emergency (E/CN.4/Sub.2/1994/23 and Corr.1 and Add.1) which recognized that the implementation of emergency regulations through ordinary, permanent laws was a "misuse of law" which was particularly serious when it took the form of criminal laws or procedures applicable under normal circumstances. Such legislation not only restricted rights which could be suspended only during formally declared states of emergency but even affected inalienable rights from which no derogation was possible.

2. In China and Tibet, the authorities continued to detain without charge those who advocated democracy and human rights and to arrest, convict and sentence them for "counter-revolutionary crimes" or other acts that allegedly undermined State security. In its report (E/CN.4/1995/31), the Working Group on Arbitrary Detention found that the exercise of entrenched rights, such as that of freedom of expression and association, could not form the legal basis of a conviction. Any municipal legislation which considered such activities to be "counter-revolutionary propaganda and agitation" was inconsistent with the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. Nevertheless, the recent State Security Law threatened the few legal means of operation left to Chinese and Tibetan democracy and human rights activists, independent religious adherents and other independent forces. The law broadened the power of public security officials to detain individuals and to determine what constituted a "hostile" organization.

3. In Indonesia, the Government had continued to use charges of "subversion", "threatening national unity" and "public criticism of the Government" to detain and imprison labour leaders and human rights activists and to close down independently operated publications. The draft presidential decree on non-governmental organizations (NGOs), which gave the Government broad powers to dissolve any non-governmental organization that engaged in political activities or activities threatening the national interest, could effectively prohibit Indonesian human rights organizations from forwarding information or expressing concern to international organizations and foreign NGOs.

4. Abuses of national security laws also continued in States which had taken positive steps towards the establishment of democratic institutions. In the Republic of Korea, for example, individuals continued to be arbitrarily detained on charges of violating the National Security Law (NSL), which criminalized any activity deemed by the authorities to demonstrate sympathy for the Democratic People's Republic of Korea. While the Republic of Korea had legitimate security concerns, the NSL had been consistently employed to punish non-violent political dissent and other activities protected under international law.

5. In Kenya also, laws such as those against "sedition", "incitement" and "holding illegal meetings" were used to detain and harass independent journalists and opposition political figures, including members of Parliament and well-known critics of the Government.

6. It was noteworthy that human rights violations tended to increase during periods in which the authorities were endeavouring to consolidate unity in the process of nation-building. A case in point was that of a Palestinian lawyer who had been arrested without any legal basis and questioned as to why his organization opposed the establishment by executive decree of State security courts in the Palestinian autonomous areas. His arrest was merely one of the hundreds of detentions carried out by the Palestinian National Authority without judicial authority.

7. His organization thus urged the Commission to endorse the observations of the Sub-Commission's Special Rapporteur and his recommendation for in-depth consideration of the issue of state of emergency. It also requested the Sub-Commission to undertake a study aimed at identifying the effects of national security and similar laws on the exercise of basic rights and at delineating the circumstances that constituted legitimate threats to national security.

8. Mr. MUGUIRO IBARRA (International Federation of ACAT (Action of Christians for the Abolition of Torture)) said that, through its work in many parts of the world, his organization had become aware of many situations in which torture was practised. It shared the concern expressed by the Committee against Torture about reports of the widespread practice of torture in the investigation of terrorist acts and of the impunity of the perpetrators. In the case of Peru, those reports were corrcborated by the information his organization had received from that country's National Human Rights Coordinator concerning the methods of torture, including rape, used by special intelligence units of the Peruvian military.

9. The practice was common knowledge in Peru but there was no investigation of reports and the perpetrators went unpunished. His organization requested, therefore, that a joint visit to Peru be made by the Special Rapporteur on the question of torture and the Working Groups on Arbitrary Detention and Enforced or Involuntary Disappearances.

10. Ms. GARGAR (France-Libertés: Fondation Danielle Mitterand) said that, speaking on behalf of the International Federation of Human Rights as well as her own organization, she wished to draw the Commission's attention to those countries, including Iran, which used torture and other cruel, inhuman or degrading treatment as a method of war against their populations and which refused to authorize any mission of investigation in their territory. The victims or witnesses of those acts continued to be the object of intimidation and even torture if they dared to speak of their ordeal. Increasingly, members of human rights associations and journalists were becoming targets of attack, as in the case of Iraqi Kurdistan where the Iraqi authorities and those of neighbouring countries, such as Iran, were causing the disappearance of members of non-governmental organizations likely to provide proof of their crimes.

11. The rehabilitation of the victims of torture was rendered more difficult by the constant threat to them which made them reluctant to provide testimony and seek treatment. In Turkey, for example, few of the refugees from Iran who had been victims of torture dared to seek medical treatment for fear of being returned to Iran. For their part, Western countries accepted very few such refugees.

12. It was clear from reports that in many countries national laws and practice took precedence over international law and were often used to oppress population groups which shared a different opinion or religion. The Iranian Government, for example, applied Shiite religious law concerning temporary marriages to Kurdish women of the Sunni sect thereby, in fact, legalizing rape in a form of ethnic cleansing. Moreover, despite its prohibition by the Constitution of Iran, torture was often used to obtain confessions or humiliating self-criticisms from victims. Law-enforcement and prison officials had come to consider that practice as normal and enjoyed complete immunity from punishment.

13. Similarly, in Peru, members of the armed forces practised torture, including rape, in their investigation of terrorist acts and remained unpunished. The organizations she was representing thus urged the Special Rapporteur on the question of torture to visit Peru to investigate the situation with regard to torture there and the Peruvian Government to request advisory services from the Centre for Human Rights.

14. The Commission must take appropriate steps to protect members of human rights associations; to permit the victims of torture and their families to provide testimony and receive medical care and protection from expulsion; to pay particular attention to the situation of female victims of torture; and to contribute to the training of legal personnel, police, prison warders and persons concerned with the treatment of torture victims; and must urge all States to sign and ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and call upon Western countries

to grant asylum to the victims of torture. It must also strengthen the resources and powers of the special rapporteurs and exert increased pressure on those Governments which continued to deny access to their territory to missions of investigation into human rights situations. It was essential that the Commission should react to the painful reality of the continued practice of torture throughout the world. It could not go on year after year accepting such shameful practices as if they were inevitable.

15. Impunity merely encouraged further violation of human rights and did nothing to promote reconciliation. In that regard, she deplored the amnesty law passed by the Mauritanian Government in 1993 in favour of those responsible for the killing of more than 500 black-African military, police and security personnel in that country. That Government, which had not yet signed the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, pursued a policy of systematic repression of the black-African population of the country.

16. Mr. MEZHOUD (Anti-Slavery International for the Protection of Human Rights), addressing the issue of the transplanting of the organs of condemned prisoners in the People's Republic of China, said that there was mounting evidence that prisoners condemned to death were the source of most of the organs transplanted in that country. In most large Chinese cities, a team of doctors was always on hand to dissect and remove the organs of prisoners after they had been shot, but organs were sometimes removed prior to the execution of prisoners. There were also reports that prisoners whose organs were to be used for transplant were kept on special diets and that the moment of their execution was determined by medical needs.

17. The Chinese authorities made no attempt to obtain the consent of the prisoners and their families. The Commission should thus urge the Chinese Government to ensure that organs to be used for transplant were taken only from prisoners sentenced to death after due process of law, that the permission of prisoners and their families was obtained in advance and that the use of organs from executed prisoners was based solely on medical need and not commercial gain.

Statements in exercise of the right of reply

18. Mr. Joon-Hee LEE (Republic of Korea), responding to allegations by a number of non-governmental organizations that the detention of certain people by his Government violated their right to freedom of opinion and expression, said that the detained persons had been imprisoned for specific crimes, such as espionage, participation in violent demonstrations and advocating violent revolution. The National Security Law (NSL) was intended not to suppress speech but to punish those who committed acts directly endangering national security.

19. The term "prisoner of conscience" should be clarified and not applied to those who had been charged with such crimes as espionage or had resorted to violence with the aim of overthrowing the Government. The so-called long-term prisoners of war were, in fact, guerrilla fighters who had committed crimes against humanity. They had all undergone a fair trial and were currently serving their sentences.

20. It should not be forgotten that Korea was the only country still divided into two parts as a result of a previous cold-war confrontation. The people and Government of his country hoped that the day would soon come when an improved political and security situation on the Korean Peninsula would make the NSL unnecessary. His Government was committed to the creation of a better human rights environment not only within its territory but throughout the world and would work closely with the Commission to achieve that end.

21. Mr. AKINCI (Observer for Turkey), referring to the comment on missing persons in Cyprus made by a previous speaker, said that the issue of missing persons from the two Cypriot communities had first arisen in 1963, when the Greek Cypriots had attacked the Turkish Cypriots to deprive them of their constitutional rights. Of the 803 missing Turkish Cypriots, 211 had been missing since that date. In comparison with their respective populations, the proportion of missing Turkish Cypriots was much higher than that of Greek Cypriots. Moreover, the missing Turkish Cypriots were all innocent civilians, while approximately two thirds of the 1,690 missing Greek Cypriots had been combatants who had fallen in action and whose bodies had not been recovered. Most of them had been killed during the internal fighting among Greek Cypriots following the five-day coup of July 1974.

22. The Committee on Missing Persons in Cyprus, established in 1981 by an agreement between the two sides, had so far been unable to complete its task because the Greek Cypriot side had consistently put forward demands outside the Committee's agreed terms of reference. The Turkish Cypriot side had been fully cooperative on the issue but the Greek Cypriots, instead of reciprocating that cooperation, had been internationalizing and exploiting the issue for propaganda purposes.

23. Mr. QUAUNINE (Bangladesh), responding to a reference made by the observer for Norway regarding the freedom of expression and security of writers in Bangladesh, said that it was generally acknowledged that his Government respected freedom of speech and tolerated open criticism. In commemoration of Language Day, writers and publishers throughout Bangladesh were currently participating in programmes which celebrated their creativity and freedom of expression while, earlier in the current month, the annual Poetry Festival had been organized in the capital by literary and cultural bodies which were in no way associated with the State or Government. There had been no complaints about the security of writers and there was a constant flow of new titles and emergence of new authors.

24. Recently, however, foreign media had focused attention on Dr. Taslima Nasreen, a Bangladeshi author who had written extensively on social issues with specific reference to women and their place in society. In keeping with the constitutional guarantees of freedom of expression, there had been no Government interference with her numerous publications. One particular book, however, had been banned by the Government because of its potential to promote communal misunderstanding and to incite violence. The book had also been banned by the Government of Sri Lanka on similar grounds. The fact that the protection of the sensitivities of all beliefs was non-discriminatory could be seen from the banning in the late 1980s of the film "The Last Temptation of Christ" on the grounds that it was offensive to the religious sensitivities of Christians.

25. On the question of Dr. Taslim Nasreen's security, the Government had, at her request, provided her with round-the-clock police protection at public expense. A warrant had been issued against her under a section of the Criminal Code which dated back to the days of British rule and stipulated measures against acts "outraging the religious feelings" of any section of the population.

26. Since being granted bail, she had travelled abroad as a free citizen of Bangladesh and had specifically stated that she had not fled the country and was not seeking asylum abroad. The due process of law was taking its course and Dr. Nasreen had been represented in court by her lawyers.

27. It was, perhaps, worthy of note that an article in the International Herald Tribune, on 4 January 1995, had commented that, if the outside world really cared about freedom and democracy in Bangladesh, it would spend less time idolizing Dr. Nasreen, a writer who had exploited the Western obsession with Islamic fundamentalism to win the literary fame that had otherwise eluded her.

28. Mr. BEBARS (Egypt), said he wished to clarify the situation with regard to application of certain laws in his country. Egypt had been one of the first States to accede to the International Covenant on Civil and Political Rights and, on the occasion of the submission of its most recent periodic report to the Human Rights Committee, that Committee had found that the Emergency Law safeguarded the rights and freedoms of individuals and was in keeping with the Constitution.

29. Egypt did not have recourse to special courts; the military courts were permanent courts within the meaning of the 1966 Law, presided over by judges with a high level of expertise, and applied civil jurisdiction. Their proceedings were public, except where extremely sensitive security issues were involved, and provision existed for defendants to appeal against the sentences passed.

30. His Government, which had acceded to no less that 18 international human rights instruments, was endeavouring to combat terrorism within the framework of the Constitution and of its international obligations. Law No. 32 of 1949 organizing non-governmental organizations did not hinder the functioning of NGOs, of which there were more than 15,000 in Egypt. His Government encouraged all sectors of society to work at both the international and local levels, as was demonstrated by the role played by Egyptian NGOs in the United Nations Conference on Population and Development. It was ready to involve itself in an objective dialogue with any NGOs that did not directly or indirectly support terrorism or make unfounded allegations.

31. Mrs. MARKIDES (Observer for Cyprus) said that the "speaker on the issue of missing persons in Cyprus" referred to by the observer for Turkey had been the representative of the only recognized Government of the island of Cyprus. Once again, the representative of Turkey was attempting to turn a human rights forum into a political arena. Despite what he had said, most of the 1,619 missing persons in question were civilians, not combatants who had fallen in action.

32. She referred him once again to the conclusions of the European Commission of Human Rights, which stated: "The Commission, having found it established in three cases, and having found sufficient indications in an indefinite number of cases, that Greek Cypriots who are still missing were unlawfully deprived of their liberty, in Turkish custody in 1974, noting that Turkey has failed to account for the fate of these persons, concludes by 16 votes against 1 that Turkey has violated article 5 of the Convention."

33. The Government of Turkey should put its own house in order before resorting to unfounded allegations. Its violations of human rights in Cyprus - substantiated by independent human rights bodies and by the United Nations - were matched by its appalling record of abuses of human rights and fundamental freedoms in Turkey itself. In a resolution adopted on 16 February 1995, the European Parliament had condemned the grave state of human rights in Turkey, and had appealed to the Turkish Government and to the Turkish Grand National Assembly to undertake a fundamental reform of its Constitution in order to guarantee more effectively the protection of democracy and human rights in Turkey and to contribute to a solution of the Cyprus problem.

34. Mr. KHOURY (Observer for the Syrian Arab Republic) said that, in a statement made at the previous meeting, the representative of the World Organization against Torture had referred to the situation in the Syrian Arab Republic and a number of other third world countries, while avoiding any reference to many countries in which his organization was active.

35. His delegation, which regularly monitored the publications of that organization and had noted that only one case of alleged torture in the Syrian Arab Republic had been mentioned in over a year, was somewhat surprised at the statement. The allegations appeared to emanate from another organization, which singled out a limited number of countries as its targets. If the statement in fact reflected that representative's own personal motives, he was damaging his organization's credibility.

36. The source of the information provided by the International Federation of Human Rights (IFHR) in its written statement (E/CN.4/1995/NGO/23), was the Organization of Committees for the Defence of Democratic Freedoms and Human Rights in Syria (CDF), a Paris-based organization that was financed by a foreign State, some of whose members were being sought by the Syrian judicial authorities. IFHR had for many years been targeting his country with its hostile campaigns. It had published incredible figures concerning the number of prisoners and detainees in the Syrian Arab Republic. Thus, it alleged that 3,000 persons had disappeared, while the Working Group on Enforced or Involuntary Disappearances had referred to only two cases. His delegation had always denied the existence of that phenomenon in his country. The figures concerning "prisoners of conscience or opinion" were likewise wholly imaginary.

37. The members of the CDF referred to had been charged with crimes committed against the internal and external security of the State. Interrogation had revealed that most of the accused were members of terrorist organizations and

that they had been financed from abroad to carry out acts against State security, tarnish his country's image, plot against the Head of State and issue calls for subversion.

38. Those admissions had been made in open court in the presence of representatives of international organizations, and of the defendants' counsel. Some of the sentences passed on that occasion had since been reduced. The allegations regarding torture and the detainees' state of health were also unfounded.

39. Mr. DU Zhongxing (China) said that certain NGOs had mounted a vicious attack on the Chinese judicial system under the current agenda item. They had always been prejudiced against China, and had attacked it by spreading malicious rumours. To give but one example, the so-called expert on education through labour cited by the International League for Human Rights, who claimed to have visited 50 prisons in China, had never crossed the threshold of a single one. His Government had always attached great importance to human rights, and its determination to protect and promote them would never be shaken by the slanders to which it was subjected.

40. Mr. SOKHONA (Mauritania) said that the events alluded to by the representative of one NGO had, in fact, been a mutiny in the armed forces of his country. There had been victims among the loyal forces as well as among the mutineers, and, following an inquiry, those responsible had been punished. Compensation had been awarded to the families of the victims on both sides. The amnesty referred to had been a parliamentary initiative, covering the whole period of the state of emergency and benefiting all those who had been prosecuted for crimes against the security of the State.

41. Regarding the reference by another NGO to Mauritanian refugees, he said that his Government had invited all those citizens who had left the country during the state of emergency to return. That invitation was still open.

42. Mr. CHEPSIROR (Observer for Kenya) said that the representative of the Robert F. Kennedy Memorial Center for Human Rights had referred to a disturbing pattern of human rights violations in Kenya. However, both before and since the multiparty elections of 1992, his Government had striven to uphold the rule of law and respect human rights and fundamental freedoms. Nevertheless, persons who threatened law and order in society and violated the rights of others by word or deed were liable to arrest and prosecution in accordance with the law. No Members of Parliament had been jailed for freely expressing their views.

43. The CHAIRMAN said that the Commission had thus concluded its discussion on agenda item 10.

STATEMENT BY MS. RIGOBERTA MENCHÚ TUM, NOBEL PEACE PRIZE LAUREATE

44. The Chairman invited Ms. Rigoberta Menchú Tum, Nobel Peace Prize Laureate, to address the Commission.

45. Ms. MENCHÚ TUM said that the International Decade of the World's Indigenous People provided an opportunity to find viable solutions to the age-old problems of marginalization, exclusion and racism faced by indigenous

peoples throughout the world. On the eve of the third millennium, it was extremely saddening to note that grave and systematic violations of the inalienable rights of those peoples continued. In some countries, indigenous communities and peoples were in danger of extinction, and in others they were subjected to armed conflicts, a further manifestation of the intolerance of humankind. Some indigenous peoples also endured extreme hunger, a further breach of their most basic rights, and in most cases they were excluded from national development programmes.

46. The international community should acknowledge that that shameful state of affairs constituted a state of emergency and required decisive action if those peoples were not to be exterminated by the end of the century. Preventing the disappearance of the age-old cultures of the indigenous peoples would be a positive contribution to peace and the future of humankind.

47. In some countries, indigenous peoples were flourishing. They made up the bulk of the local population and, in spite of all the obstacles, had made considerable progress in the enjoyment of their economic, political, social and cultural rights. Many initiatives over the years were bearing fruit in the form of valuable experiments that could contribute to a multi-ethnic, multicultural and multilingual future in which peaceful coexistence within pluralistic societies could be guaranteed.

48. In her own country, Guatemala, which had endured more than 34 years of war, there were signs of dialogue and negotiation to achieve a political solution, and a hope that the process would lead to the full enjoyment by the indigenous peoples of their identity and their rights. However, if the ground they had gained was not to be lost, it was essential to support and strengthen their organizational experiments and institutions and to promote conditions in which they could play a full and active part in building the future.

49. One manifest advance in recent years was the achievement of greater national and international public awareness of the rights and values of indigenous peoples. Many countries had recognized the linguistic and cultural diversity of their peoples in their constitutions. Mutual respect between indigenous and non-indigenous peoples was being encouraged and the indigenous peoples' traditional knowledge was being placed at the service of society as a whole. Those encouraging developments showed that the presence of indigenous peoples in a country did not necessarily lead to conflict but could add richness to a nation's identity. She firmly believed that respect for diversity was fundamental to the eradication of racism, xenophobia and intolerance and that ways must be found of eliminating every expression of discrimination against indigenous peoples.

50. An armed conflict had recently broken out in Chiapas, Mexico, in an area inhabited mainly by the Maya indigenous people. The causes of that conflict must be eradicated by means of dialogue and a political solution sought. On the border between Peru and Ecuador, a war was being fought that directly affected the local indigenous inhabitants. That war, too, must end and the

damage done to the indigenous population must be halted. More generally, the impact of armed conflicts on indigenous peoples must be assessed and a mechanism established to monitor violations of their rights and find peaceful solutions.

51. Persons from indigenous communities in 24 countries had recently attended the second Assembly of the Indigenous Initiative for Peace at UNESCO headquarters in Paris. They had established three core objectives in the context of the historic opportunity provided by the International Decade.

52. The first objective was to promote the establishment of a new order in relations between indigenous peoples, Governments and society in general, based on mutual respect and recognition and promotion of the rights of the indigenous peoples at the national and international levels. To achieve that objective, instruments for the verification of indigenous rights and violations of those rights, and to ensure the rights of indigenous peoples through amendment of and effective compliance with national constitutions and respect for international instruments were needed. It was also necessary to devise models of pluralistic coexistence based on the development of the indigenous peoples and to establish relations of equality with the NGOs and international cooperation agencies.

53. The second objective was to support the material and spiritual progress and development of the indigenous peoples by promoting their cultural values and traditions, and by encouraging solidarity and communication among them at the national and international levels. To that end, their organizations must be strengthened and their values and age-old skills used to build a new ethical system governing relations between the indigenous and non-indigenous sectors of society.

54. The third objective was to help prevent conflicts involving indigenous peoples and to promote peaceful solutions to such conflicts throughout the world. To that end, special vigilance was needed to ensure that rights were not violated in potential conflict zones. In that connection, moreover, proposals must be drawn up to deal with border disputes between States that affected indigenous peoples.

55. The Working Group on Indigenous Populations had concluded 12 years of work on the draft declaration on indigenous peoples, and had submitted it to the Commission for adoption. The right to self-determination was the keystone of that draft declaration, and the prerequisite for the respect of all other rights, such as the right to development. The indigenous peoples were currently facing innumerable problems caused by the application of inappropriate development models. In fact, most of the conflicts arising in territories inhabited by indigenous peoples were actually struggles for the control of natural resources.

56. The draft declaration represented the minimum standards required for the protection of the indigenous peoples, for whom there was a close link between human rights, peace and development. Consequently, the Commission should support the draft declaration as one of its first activities under the

International Decade. In that connection, steps must be taken to ensure that indigenous representatives continued to be closely involved in finalizing the draft declaration.

57. The Working Group on Indigenous Populations, the sole body in which indigenous peoples could make their voices heard and exchange ideas with other peoples and Governments, should be given greater support, and she endorsed the suggestion that the Working Group should henceforth include representatives of the indigenous peoples.

58. Several months previously, discussions had begun on establishing a permanent forum in the United Nations for indigenous people, which she regarded as an important initiative. Many indigenous persons were interested in such a body, in which they could participate with Governments on an equal footing. She was pleased to hear that discussions on the forum would be continued at the next meeting of the Working Group in July 1995 and that an expert working group would be established to examine further ideas on the forum put forward by indigenous persons.

59. The establishment of a United Nations voluntary fund for indigenous peoples was of overriding importance for preparing plans and programmes to promote the development of indigenous peoples but the representatives of the indigenous peoples must participate fully in deciding how the resources of the fund were to be used. It was also essential that the regular budgets of both the United Nations and the specialized agencies should earmark resources for the activities of the Decade and that States should allocate sufficient funds to carry out the Programme of Action for the Decade at the national level.

FURTHER PROMOTION AND ENCOURAGEMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING THE QUESTION OF THE PROGRAMME AND METHODS OF WORK OF THE COMMISSION:

(a) ALTERNATIVE APPROACHES AND WAYS AND MEANS WITHIN THE UNITED NATIONS SYSTEM FOR IMPROVING THE EFFECTIVE ENJOYMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

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(c) COORDINATING ROLE OF THE CENTRE FOR HUMAN RIGHTS WITHIN THE UNITED NATIONS BODIES AND MACHINERY DEALING WITH THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

(d) HUMAN RIGHTS, MASS EXODUSES AND DISPLACED PERSONS

(agenda item 11) (E/CN.4/1995/5 and Add.1, 42-45, 46 and Add.1, 48, 49, 50 and Add.1-3, 51, 107, 113 and 147; E/CN.4/1995/NGO/5, 8, 22 and 28)

ADVISORY SERVICES IN THE FIELD OF HUMAN RIGHTS (agenda item 21) (E/CN.4/1995/85, 87 and Add.1, 88, 89 and Add.1 and 90; E/CN.4/1995/NGO/10; A/49/635 and Add.1)

60. Mr. DENG (Representative of the Secretary-General on the question of internally displaced persons), introducing his report (E/CN.4/1995/50 and Add.1-4), said that his experience over the past three years reflected a

complex situation with conflicting indicators. The crisis of internal displacement continued to escalate in Bosnia, Burundi, Rwanda and, most recently, Chechnya. Estimates of internally displaced persons currently exceeded 30 million. There had been a growing awareness for the problem, but the international response was still constrained and inadequate.

61. The growing urgency of the problem had been highlighted by field missions, which had focused attention on what had still to be done to provide for the protection and assistance needs of the displaced and had facilitated a constructive dialogue with Governments. It was precisely because of the practical importance of on-the-ground experience that the Commission and the General Assembly had placed emphasis on that aspect of his mandate. To date, he had visited nine countries and produced reports with recommendations for improving the situation of internally displaced persons there. Given the global nature of internal displacement, still more visits were needed. While governments had, on the whole, been responsive, further efforts were essential to facilitate the monitoring of the agreements reached and to encourage practical steps to enhance protection and assistance.

62. Significant progress had been made in the areas of legal standards and institutional arrangements. The debate still continued as to whether existing law provided an adequate basis for a comprehensive system of protection and assistance but a broad consensus had emerged around the Commission's request for a compilation and evaluation of existing law with a view to preparing guiding principles and a code of conduct. The issue of whether or not a legally binding instrument was necessary would be decided in the light of the results obtained.

63. In the broader context, information available from a wide variety of sources must be carefully processed and made available, and that required appropriate skills and functional capacity. There was a clear need for a central point within the United Nations system with the capacity to bring together information on internally displaced persons throughout the world. Collaboration among all the agencies, governmental and non-governmental, whose mandates and activities related to the internally displaced had become the operating principle of the international system. Although there was probably sufficient collective international capacity to meet the challenge, a focal point was still necessary to mobilize and consolidate that potential.

64. The Emergency Relief Coordinator had been assigned the task of coordinating the international response to situations of internal displacement. Within that framework, the mechanism of the Representative of the Secretary-General should in future play a complementary role: the Coordinator's mandate was humanitarian with emphasis on assistance for all the various categories of persons in need, while the Representative's mandate focused more specifically on the internally displaced, emphasizing the protection aspect. The role of the Representative should remain one of an advocate for the cause of the internally displaced.

65. International efforts on behalf of the internally displaced had tended to focus on providing urgent relief assistance, but even more challenging was the need to ensure the basic human rights and security of the affected population,

especially in conditions of internal conflict. Moreover, the protection of human rights was a vital aspect of the overall solution to the root causes of displacement.

66. It was becoming increasingly clear that the internally displaced must be reintegrated into national development programmes. Since displacement uprooted populations, the ultimate solution to their plight must be the normalization of conditions and the rebuilding of their capacity to maintain a self-sustaining livelihood. Consultations had already been initiated on cooperation between the Representative and the United Nations Development Programme (UNDP) for the purpose of producing appropriate strategies in that area.

67. Women and children constituted a particularly vulnerable group among the internally displaced. Although they were by far in the majority, their special needs were often overlooked. Moreover, women, who were often left to care for the young and the old, did not participate at all adequately in the decision-making that directly affected them. In virtually every displaced persons' camp, that he had visited, women had constituted a silent majority. Both the Commission and the General Assembly had requested him to pay specific attention to the protection and assistance needs of women and children, and the extent of the challenge was just beginning to unfold.

68. When he had undertaken his assignment three years previously, he had hoped that the international community would agree on a set of standards and institutional arrangements that would render his position unnecessary after the study phase. Unfortunately, the need for his mandate persisted. It had become clear that studying the problem formed part of the ongoing process of producing normative and operational principles and strategies for addressing the escalating crisis.

69. For that reason, he had undertaken, in collaboration with several academic and research institutions, an in-depth and comprehensive study of the problem in response to the Secretary-General's request. The findings of the study were likely to provide him with a deeper understanding of the problem and thereby strengthen his capacity to contribute effectively to a more concerted international response.

70. In his mandate, the Representative was called upon to perform a wide variety of functions. If he was to do so, the means to implement the mandate must be strengthened with commensurate human and material resources. It was to be hoped that any resolution that the Commission might adopt on the subject would reflect the rising level of awareness in the international community about the crisis of internal displacement and the increasing resolve to do something practical about it.

71. Ms. COOMARASWAMY (United Nations Special Rapporteur on violence against women, including its causes and consequences), introducing her preliminary report (E/CN.4/1995/42), said that, according to United Nations reports, in the year 1992 alone 12,000 women had been raped in the former Yugoslavia; in the United States, a rape occurred every six minutes; in Papua New Guinea, 67 per cent of rural women and 56 per cent of urban women were victims of wife abuse; in Santiago, Chile, 80 per cent of women in a sample survey had been

victims of violence in their homes; in rural Bangladesh, malnutrition had been found to be three times more common among girls than boys; 8,000 to 10,000 girls were brought from Thailand to Japan every year for prostitution and trafficking; given the population figures for India and China, there should be about 30 million more women in India and 38 million more women in China than was actually the case; the UNHCR data indicated that, among Vietnamese boat people, 39 per cent of the women had been abducted and/or raped by pirates at sea; more than 100 million women had undergone genital mutilation in Africa alone; and every minute and a half, a woman was raped in South Africa. Statistics such as those pointed to the scale of violence committed against women in every part of the world. Violence against women was not only an issue of criminal justice but also an infringement of fundamental human rights.

72. As part of her mandate, she would undertake fact-finding missions to specific countries to explore in depth some of the related themes. The field trips would cover the five regions and the countries would be identified accordingly.

73. Another component of her mandate involved the assessment of individual allegations of violence against women and the forwarding of complaints to Governments to seek clarification and to recommend, in dialogue with States, ways and means at the national, regional and international levels to eliminate such violence. The complaints and clarifications would be reproduced in her reports to the Commission.

74. She had set the following priorities for her work: the problem of violence against women in times of armed conflict and violence against women in the family, in the community and perpetrated or condoned by the State.

75. Since the mandate covered such a wide spectrum, she would divide the work in accordance with the themes set forth in the United Nations Declaration on the Elimination of Violence Against Women. Her first report was a preliminary survey of the issues, identifying themes and factors of importance to be followed up later; her next report, to be submitted in 1996, would focus on violence in the family; and her final report, to be submitted in 1997, would be devoted to violence in the community and violence perpetrated and condoned by the State. She also hoped to submit comprehensive recommendations for eliminating violence against women involving both legal and non-legal strategies.

76. On 29 July 1994, a note verbale had been sent out to Governments, NGOs and United Nations bodies and agencies soliciting information. She had received responses from a few Governments, although the scale and quality of information differed widely. She thus requested the Member States that had not already done so to respond to the note verbale by sending her information as soon as possible so that it might be processed and analysed for her next report. While Governments had not been very forthcoming, NGOs and United Nations organs had been extremely helpful. Large gaps still remained in the information-gathering, however, because some regions of the world had less resources and had been able to communicate less effectively. She

therefore urged all Governments and NGOs working in those countries and regions to send her information so that her reports would be truly global in character.

77. Unfortunately, all the special rapporteurs lacked the resources they needed to carry out their mandates. While funding for her own research was available from private donors in the West, she did not wish her reports to be challenged on the grounds of excessive reliance on donor countries. It was imperative, therefore, that Governments increase their support to the Centre for Human Rights and ensure, at the very minimum, that the personnel assisting special rapporteurs remained with them for the full term of their mandates.

78. Her report emphasized the need for Governments to draw up national plans of action to eradicate violence against women, as required by the Declaration on the Elimination of Discrimination against Women. Under such plans, States would commit themselves: to refrain from invoking custom, tradition or religion as grounds for failure to meet their obligations to eliminate violence against women; to ratify the Convention on the Elimination of All Forms of Discrimination against Women, without reservations; to enact laws and administrative measures to deal with the special problems of violence against women; to ensure specialized care and assistance to women victims of violence; to train police and judicial officials to deal more effectively with problems of violence against women; to reform educational curricula, media policy and data-collection strategies to provide a better reflection of the problem of violence against women; and to report to international bodies on the measures adopted. She hoped that the Commission on Human Rights would adopt a resolution calling on the Member States to draw up and implement such plans of action.

79. One of her major priorities was the problem of violence against women in times of armed conflict. It was incumbent on the international community to take steps to ensure that rape and sexual slavery during armed conflict were classified as international war crimes and that the victims of such acts were entitled to compensation.

80. The Fourth World Conference on Women would provide an opportunity for women to plan actions that would give concrete meaning to the concept of women's rights. She would be conducting a series of activities at the Conference and would see to it that her report was widely circulated among the participants. The Commission on Human Rights must assume its responsibilities at the Conference by reaffirming that the human rights of females were an inalienable and integral part of human rights as a whole.

81. Mr. HAREL (France), speaking on behalf of the European Union and of Bulgaria, Hungary, Poland, Romania, Slovakia and the Czech Republic, said that the European Union had played an active part in the establishment of the post of High Commissioner for Human Rights. Since his appointment in April 1994, the High Commissioner had demonstrated his determination to fulfil his mandate by basing his actions on three complementary strategies: cooperation at all levels; a comprehensive and integrated approach to the protection and promotion of human rights; and the implementation of plans and programmes to promote human rights at the international, national and local levels.

82. The High Commissioner, who was responsible for coordinating United Nations activities in the field of human rights, had taken rapid action in that direction by participating actively in the deliberations of the Administrative Committee on Coordination (ACC) on human rights issues. The countries he was representing endorsed the High Commissioner's efforts to initiate a dialogue between human rights structures within the United Nations system. Better coordination and increased cooperation among those structures, including a more rational use of resources and skills, could not but enhance the efforts to promote and protect human rights. In that connection, he stressed the importance of regular meetings between special rapporteurs and treaty monitoring bodies and the need to implement any recommendations made at such meetings.

83. The countries he was representing also supported the initiatives by the High Commissioner to strengthen cooperation with regional organizations working in the area of human rights.

84. The High Commissioner was also mandated to oversee the functioning of the Centre for Human Rights which was itself responsible for coordinating United Nations activities in that area. The Centre's activities had expanded greatly in recent years and would undoubtedly continue to do so. It was, therefore, essential that the Centre should have adequate human and financial resources. There was, unfortunately, an ever-widening gap between the Centre's responsibilities and the meagre resources allocated to it. Without adequate resources, the Centre and indeed the entire human rights programme would be in jeopardy. At the most recent session of the General Assembly, the European Union had requested the Secretary-General to ensure that additional resources for human rights activities were made available for the period 1994-1995. It had also requested the Secretary-General to provide within the biennial budget adequate human and financial resources for the Centre and the High Commissioner.

85. The countries he was representing wished to pay tribute to the efforts of the Assistant Secretary-General for Human Rights. It welcomed the first steps that had been taken to improve the administration and management of the Centre for Human Rights and endorsed the High Commissioner's decision to carry out a full examination of Secretariat structures in the area of human rights.

86. The Centre for Human Rights and the Office of the High Commissioner were the basic pillars of the United Nations system for the protection and promotion of human rights. They must work together to strengthen all human rights efforts, including field activities and technical assistance.

ORGANIZATION OF THE WORK OF THE SESSION (agenda item 3) (continued)
(E/CN.4/1995/15 and Corr.1, E/CN.4/1995/16-18 and 115;
E/CN.4/Sub.2/1994/2/Add.1; A/49/444 and 446)

87. Mrs. PINTO (Independent Expert on the situation of human rights in Guatemala), introducing her report on assistance to Guatemala in the field of human rights (E/CN.4/1995/15), said that 1994 in Guatemala had been characterized by two constant features: the peace negotiations and widespread violence.

88. The Framework Agreement for the Resumption of the Negotiating Process between the Government and the Unidad Revolucionaria Nacional Guatemalteca (URNG), concluded in January 1994, had raised great hopes in Guatemala. It had led to the conclusion of a number of important agreements including the Comprehensive Agreement on Human Rights, an agreement on the resettlement of displaced persons and an agreement to establish a commission to investigate violations of human rights.

89. Implementation of the Comprehensive Agreement on Human Rights had begun with the establishment in November 1994 of the United Nations Human Rights Verification Mission in Guatemala (MINUGUA). Unfortunately, it had not been possible to achieve the stated goal of a lasting and sustainable peace by the end of December 1994. The question of the identity of indigenous populations had proved to be a major stumbling block in the negotiating process. Both parties to the conflict needed to reaffirm their willingness to proceed with the peace process, under United Nations guidance.

90. The armed conflict had persisted despite the efforts to achieve peace. The peace negotiations had not yet resulted in the demilitarization of Guatemalan society. In order to strengthen civilian authority in the context of the transition, the military authority had to be brought into line with the requirements of a State subject to the rule of law.

91. The arbitrary and discriminatory practice of forcible recruitment into the armed forces had reached its apex during the early months of 1994. She therefore welcomed the presidential decision of June 1994 that only volunteers would henceforth be recruited until new legislation on military and social service had been adopted. In the light of that decision, the institution of military commissioners, which had been responsible for recruitment and had been accused of human rights abuses, was no longer necessary and should be dismantled.

92. No provisions had been made for the demilitarization of the Presidential General Staff. Intelligence work remained in the hands of the military authorities and the plan to establish an intelligence secretariat as part of the executive branch did not exclude the participation of the military sector.

93. The entry into force of the new Code of Criminal Procedure had helped to limit the scope of military jurisdiction. Nevertheless, military courts still dealt with cases in which there was prima facie evidence that members of the armed forces had been involved in the commission of ordinary offences. Military authorities continued to be closely involved in the judicial process. The entire military judicial system needed to be reformed to bring it into line with the requirements of a State subject to the rule of law.

94. The police system had also to be demilitarized. Three police forces coexisted in the country and their prestige and effectiveness had been called into question by reports that those forces had used disproportionate amounts of force on various occasions. There was clearly a need to establish a single new police force, free from corruption and inefficiency, and operating at the highest professional level.

95. No steps had been taken to counter the actions of the Civilian Self-Defence Patrols (PACs). Although the PACs had been created to serve as counterinsurgency groups, they were known to operate against the civil population. They were in fact an occupation force in their own country. It was not enough to make cosmetic changes and simply rename the groups; they had to be dismantled. Any counterinsurgency and intelligence functions that the PACs were actually carrying out could be assumed by the army.

96. The high level of militarization had not shielded the Guatemalan population from physical violence, which had increased during the past year. Various hypotheses had been proposed to account for that trend. According to the authorities, the violence arose from the social disintegration of the country and the action of groups attempting to destabilize society. There had also been reports of a social clean-up to rid society of its marginal elements.

97. There had been an alarming increase in incidents involving harassment of and death threats to important members of society, including the heads of non-governmental organizations, judges, journalists and academics. Many of the death threats had been carried out. Those actions constituted a well-directed attack on the already strained social fabric of the country. The Government must take action to put an end to those practices.

98. There had been a progressive change in the pattern of human rights violations. Unfortunately, the decrease in reports of enforced disappearances or torture did not signal an end to violations but rather an upsurge in other equally serious acts such as extrajudicial executions, many cases of which remained unresolved. Clandestine graveyards were being discovered almost daily, testimony to the magnitude of the massacres carried out in the 1980s.

99. She was convinced that the President of Guatemala did not endorse a policy of enforced disappearance. Nevertheless, it was a matter of concern that such practices were continuing and that over 3,000 pending cases remained unclarified.

100. Investigations into cases of summary execution and torture continued. The combat against impunity must go beyond talk and result in action: the administration of justice must serve the cause of justice. The new Code of Criminal Procedure was a welcome step in that direction but did not entirely resolve the problem. Judges must be given the means to enforce their decisions and must be protected from harassment. The autonomy and independence of the judiciary must be guaranteed both in theory and in practice, and that included the enactment of appropriate legislation, the creation of a general council of the judiciary, and the establishment of a career track for judges. The autonomy and independence of the Government Procurator's Office must also be ensured.

101. Current legislation pertaining to the penitentiary system was inadequate. The prison system must be run by qualified personnel and based on a legal framework which guaranteed respect for the human rights of both detainees and prison staff.

102. The indigenous population of Guatemala, which accounted for 59 per cent of the total, had never participated in the decision-making process. Yet, it covered the most vulnerable groups, subject to widespread poverty and with very little actual protection of their rights. Under existing legislation, indigenous people had no opportunity to organize politically. The Government had no immediate plans for implementing constitutional standards concerning indigenous populations; nor did it intend to ratify ILO Convention No. 169 (Indigenous and Tribal Peoples Convention). Thus, while the law did not discriminate against the indigenous peoples, it did not protect them either, resulting in a situation of de facto discrimination.

103. The Communities in Resistance (CPRs) had also been excluded from governmental action. The State's civilian institutions had not reached those communities and had not even documented them, with the result that a feeling of insecurity persisted. Those communities were not even recognized as a non-combatant civilian population, as provided for under the Comprehensive Agreement on Human Rights.

104. Refugees continued to return to Guatemala from Mexico, in an irreversible but slow process. In accordance with the agreements concluded, the Government must ensure the security of the returnees and provide them with adequate health services, education, housing and documentation.

105. The widespread poverty affecting the majority of the Guatemalan people was reaching alarming proportions. Steps should be taken to ensure respect for the legislation in force relating to a guaranteed minimum wage and social security. The Government needed to provide easier access to land and institute a more effective system of land distribution. While there had been some small achievements in the areas of health and education, it was not enough to meet actual needs.

106. The situation of human rights in Guatemala continued to require close observation by the Commission on Human Rights. MINUGUA constituted a key element in the peace negotiations and was mandated to follow up complaints of human rights violations. The Commission had a complementary mission: it must examine the situation of human rights in Guatemala and evaluate whether and to what extent it complied with international norms and standards. In that connection, the Commission should continue to support the mechanism by which it received information on the situation in Guatemala.

The meeting rose at 6 p.m.